COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PUBLIC LAW DIVISION

2021/PUB/jrv/0027

IN THE MATTER of an application by **CABLE BAHAMAS LTD.** for leave to apply for Judicial Review. **AND IN THE MATTER OF** the Decision and Interim Order of the Respondent issued on the 22nd day of July A.D. 2021 (**the Decision**).

AND IN THE MATTER OF the Communications Act ("**the Act"**).

BETWEEN

CABLE BAHAMAS LTD.

Applicant

V.

UTILITIES REGULATION AND COMPETITION AUTHORITY

Respondent

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Kahlil D. Parker with him Ms. Roberta W. Quant of Cedric L. Parker & Co. for the Applicant
Mr. John F. Wilson QC with him Ms. Alexandria Russell of McKinney Bancroft & Hughes for the Respondent

Hearing Date: 18 August 2021

Public Law - Judicial Review — Utilities Regulation and Competition Authority – Decision to make an Interim Order – Limited in time – Serious and irreparable harm – Threshold fr leave to apply for judicial review – Alternative remedy - Extant Notice of Appeal to Utilities Appeal Tribunal - Prematurity of application for leave – 'Exceptional' circumstance - Remedy of last resort – Breach of the rules of natural justice.

The Applicant, a cable network provider in The Bahamas, seeks leave to apply for Judicial Review

The Applicant argued that this case fell within the category of "exceptional" in that (i) the Utilities Appeal Tribunal is not properly constituted to hear its appeal and since it has met the threshold requirement for leave to apply for judicial review, this Court should exercise its discretion to grant leave.

HELD: Granting leave to the Applicant to apply for judicial review with costs to be costs I the cause.

1. The Applicant has explored the correct avenue by appealing the decision of the Respondent to the Utilities Appeal Tribunal ("UAT"). That said, the fact that the Utilities Appeal Tribunal is not functional is a concern to the Court. It makes this case an "exceptional" one warranting the Court to exercise its discretion to grant leave to apply for judicial review. It is meaningless that approval has been given for the appointment of the members and officers of the UAT but they have not yet received their Instruments of Appointment and are not presently competent to hear appeals. It has been nearly a month that the Applicant has lodged an appeal against the Decision to the UAT. The appeal should have been given priority given that the General Election is on 16 September 2021.

2. It does not lie in the Respondent's mouth to say that the Applicant has an alternative remedy when the members and officers of the UAT have not received their Instruments of Appointment as they are presently incompetent to hear any appeals: Further, the Attorney General was unable to advise CBL as to a timeline for the regularization of the UAT to become functional: **Bertram Bain v Commissioner of Police** [2017/PUB/jrv/00023] considered.

3. The Applicant has satisfied the Court that (i) it has a "sufficient interest" in the matter; (ii) the application was made promptly and (iii) it has an arguable case with a realistic prospect of success: **Inland Revenue Commissioners v National Federation of Self Employed and Small Business Ltd** [1981] A.C. 617 at pages 643-644 and **Sharma v Browne-Antoine** (2006) 69 WIR 379; [2006] UKPC 57; [2007]1 WLR 780 at page 787.

4. In accordance with Order 53 rule 5(4), the Applicant shall serve the Notice of Motion on the Respondent. The date for the hearing of the Judicial Review is Friday, 3 September 2021 before Charles J. commencing at 10.30 a.m.

RULING

Charles J:

Introduction

[1] This is an urgent *ex parte* application for leave to apply for judicial review against a decision made on 22 July 2021 by the Respondent ("URCA") without prior notice whereby it ordered that the Applicant ("CBL") *"shall immediately cease and desist*

from broadcasting the instant advertisement regarding the Honourable Phillip E. "Brave" Davis and the Opposition Progressive Liberal Party" (the "PLP") of which Mr. Davis is the Leader "*unless and until further notified in writing by URCA" and that "failure and/or refusal to comply with this Interim Order may result in enforcement action taken by URCA under Part XVII of the Communications Act, 2009."* ("the Decision").

[2] CBL is aggrieved by the Decision and seeks the following relief:

a. An Order of Certiorari to remove into this Court and quash URCA's Decision and the Interim Order dated 22 July 2021;

b. A Declaration that the said exercise, or purported exercise, by URCA of its statutory power to issue the Interim Order complained of herein without proper, or any, due process or reasonable or lawful justification, was *ultra vires* the Communications Act, 2009, arbitrary, oppressive, irrational, unlawful, unreasonable, null, void and/or of no legal effect;

c. A Declaration that URCA's Decision to issue the Interim Order was so manifestly unreasonable that no reasonable authority or tribunal, entrusted with its powers, could reasonably have come to that decision in all the circumstances of this case;

d. A Declaration that URCA's Decision was arbitrary, oppressive, irrational, unreasonable, unlawful, null and void and of no legal effect;

e. A Declaration that in all the circumstances, URCA's Decision to issue the Interim Order was taken in bad faith;

f. A Declaration that URCA's actions constituted an intentional and/or malicious failure and/or refusal to perform its statutory duty;

g. A Declaration that URCA's conduct toward CBL was *ultra vires,* arbitrary, oppressive, discriminatory and/or otherwise unconstitutional.

h. An award for aggravated and exemplary damages;

i. An award of vindicatory damages for URCA's unlawful interference with, and violation of, CBL's statutory, constitutional, and due process rights;

j. Costs and any other relief.

[3] By directions of the Court, the application for leave was heard *inter partes.*

Salient facts

[4] The facts are largely not in dispute. To the extent that there may be a departure from the undisputed facts, then what is stated is gleaned from the affidavits and documentary evidence which were presented to the Court. The Court bears in mind that there has been no cross-examination of any of the affiants so greater reliance is placed upon contemporaneous documentary evidence.

[5] CBL is, and was at all material times, a duly licensed communications provider, delivering residential and corporate broadband internet, cable television, fixed line and mobile telephone and data services to the Bahamian population. Prior to the announcement of the date for General Elections, which will be held on 16 September 2021, CBL commenced broadcasting of political advertisements including the instant advertisement regarding Mr. Davis and the PLP.

[6] URCA is a public authority established under the Utilities Regulation and Competition Authority Act and is the regulator of the Electronic Communications Sector under the provisions of the Communications Act, 10 of 2009, Ch.304 (the "Comms. Act") and the provisions of the Utilities Regulation & Competition Authority Act, 12 of 2009 Ch. 306 ("the URCA Act"). URCA's duties, among other things, extend to making rules for the regulation of content of carriage services broadcast in The Bahamas to do so URCA has issued the Revised Code of Conduct for Content Regulation ECS8/2021 ("the Code") to be observed by broadcasters.

[7] Pursuant to its duties under the Code, on 15 July 2021, CBL notified URCA of a complaint made against CBL by Public Communications Agency ("PCA") advertising agency. The PCA complaint alleged that CBL was in breach of the Code by rejecting an intended advertisement based on CBL's concern that the content of the advertisement "bordered on defamation".

[8] On 20 July 2021, URCA received a written complaint against CBL on behalf of Mr. Davis and the PLP which alleged that CBL was in breach of paragraph 6.8 of the Code by its broadcast of a political advertisement since 12 July 2021 and continuing the contents of which defames and slanders Mr. Davis and the PLP ("the Advertisement"); additionally an addendum complaint of 21 July 2021 alleged that CBL was also in breach of paragraph 6.6 of the Code in failing to identify at the beginning and end of the Advertisement that it was a political advertisement and on whose behalf it was run.

[9] Given the complaint received from Mr. Davis and the PLP, URCA alleges that, despite its initial rejection of the advertisement, CBL had at some point revisited its earlier decision and determined to run the advertisement. CBL says that it is not running that particular advertisement and provided to the Court a version of the Advertisement in question.

[10] As a result of a letter from McKinney Turner & Co. (attorneys for Mr. Davis and the PLP), URCA issued an urgent Interim Order on 22 July 2021, pursuant to its powers under section 96 of the Comms. Act and paragraph 10.11 of the Code, thereby directing CBL to immediately cease and desist from broadcasting the Advertisement, on the basis that conduct alleged 'may' be in breach of the provisions of the Code and that there was likely serious and irreparable harm being caused. The Interim Order had no

[11] According to URCA, the purpose of such an 'urgent' order is both obvious and necessary. It prevents the irremediable harm complained of for a reasonable

period sufficient to allow URCA to undertake its investigation and determine if a final order ought to be made.

[12] On 28 July 2021, CBL lodged an appeal against the Decision to the Utilities Appeal Tribunal ("UAT") pursuant to and in accordance with section 111(1)(e) of the Act.

[13] On 29 July 2012, CBL was advised by the Office of the Attorney General that although approval has been given for the appointment of the members and officers of the UAT, they have not yet received their Instruments of Appointment and are not presently competent to hear appeals. URCA says that, whilst this may be so, there is a Registrar in place who is functioning. As it presently, stands, the UAT is incompetent to hear CBL's appeal which was filed almost a month ago. Further, the Attorney General was unable to advise CBL as to a timeline for the regularization of the UAT to become functional.

[14] On 4 August 2021, CBL filed a Notice of Application for leave to apply for Judicial Review supported by the affidavit of its Vice President, Media, David Borrows ("Mr. Burrows"). On the same day, CBL also filed an *Ex Parte* Summons and Certificate of Urgency.

[15] On 10 August 2021, the application for leave to apply for Judicial Review came before me. I directed an *inter partes* hearing on 18 August 2021 because Counsel for URCA was out of the jurisdiction. I reserved my decision.

[16] For reasons which are set out below, I grant leave to CBL to apply for Judicial Review and because of the urgency of this matter, I will hear the Notice of Motion (to be filed) on Friday 3 September 2021 at 10.30 a.m. The requirement contained in RSC O. 53 r.5 (4) that there must be at least 10 clear days between the service of the notice of motion or summons and the hearing is abridged to facilitate this hearing before the General Elections.

The issues

[17] The issues which arise for consideration are:

1. Whether CBL has met the threshold for leave to apply for judicial review; and
2. Whether there is an alternative remedy which has not been utilized by CBL?

Issue 1: Whether CBL has met the threshold test for the grant of leave

[18] RSC O. 53 r. 3 (1) mandates that no application for judicial review shall be made unless the leave of the Court is first obtained in accordance with the rules. O. 53 r. 3(2) R.S. C. 1978 mandates that an application for leave shall be made *ex parte* but the Courts have, over the years, circumvented this rule and, particularly in a case such as the present, directed that notice of the hearing be given to the respondent which is a product of the new Civil Procedure Rules (soon to be implemented).

[19] RSC O. 53 r. 3 (7) specifies that leave shall not be granted unless the Court is satisfied that the applicant has "*a sufficient interest*" in the matter to which the application relates. It is not challenged by URCA that CBL does not have "sufficient interest" and properly so as there is no one with a more direct and vested interest in the Interim Order, than the Applicant.

[20] The next requirement is contained in O. 53 r. 4(1) of the RSC which provides that:

> **"An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers there is good reason for extending the period within which the application shall be made."**

[21] CBL's application for leave was filed on 4 August 2021 which is well within six months of URCA's Decision taken and given effect on 22 July 2021. This requirement is not challenged by URCA.

[22] The general rule is that leave will usually be granted where an applicant discloses an arguable case with a realistic prospect of success. I bear in mind that, as I consider this requirement, I am not concerned with the merits of the Decision nor

am I required to perform an in-depth analysis of CBL's case. I am rather concerned with the legality and/or rationality of the Decision rather than the merits, with the decision of the jurisdiction of the decision maker and with the fairness of the decision making process.

[23] In **Inland Revenue Commissioners v National Federation of Self Employed and Small Business Ltd** [1981] A.C. 617, Lord Diplock summarized it this way at 643 -644:

> **"The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at this stage. If, on a quick perusal of the material the available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application."** [Emphasis added]

[24] In assessing whether CBL has an arguable case with a realistic prospect of success, I turn my attention to the case of **Sharma v Browne-Antoine** (2006) 69 WIR 379; [2006] UKPC 57; [2007] 1 WLR 780 at page 787, where the Privy Council sated:

> **"The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628; Fordham, *Judicial Review Handbook*, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in *R(N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mutandis to arguability:**

> **"… the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."**
>
> **It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen": *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 733."** [Emphasis added]

[25] Learned Queen's Counsel Mr. Wilson argues that the proposed grounds for judicial review do not demonstrate an arguable case for leave and in circumstances of an *inter partes* hearing for leave, the higher bar of realistic prospect applies. Firstly, Mr. Wilson QC argues that judicial review is premature having regard to the statutory process. I will come back to this later in this Ruling.

[26] Mr. Wilson QC next argues that CBL cannot succeed on the ground that URCA acted ultra vires section 96 of the Comms Act as URCA did not nor did URCA misinterpret or wrongly apply principles in the exercise of its section 96 powers. He contends that construing the section 96(2)(a) provision as imposing any mandatory obligation to state a specific duration within the interim order would result in unworkability of the legislation and frustrating the policy being implemented by exercise of the power of URCA particularly because URCA would be unable to determine exactly how long it will take to conduct the investigation. Secondly, in issuing an interim order to prevent the likely serious and irreparable harm, URCA need only be satisfied that the damage cannot be remedied by the final decision which the authority will reach at the conclusion of the matter.

[27] Mr. Wilson QC further argues that all of the following grounds of appeal will fail namely (i) ultra vires: paragraphs 49-51; (ii) unreasonableness: paragraph 52 ; (iii) the *audi alteram* natural justice and the need for reasons: paragraph 53-57; and (iv) constitutionality: paragraphs 58-59 of the Skeleton Arguments dated 17 August 221.

[28] Learned Counsel Mr. Parker who appears for CBL argues that the Interim Order failed to comply with the letter and spirit of section 96 of the Comms Act which provides, at section 96(2)(a) and (b) that: *Any interim order* ***shall be (a) limited in time*** *to such reasonable period of time as URCA may expect to require to complete the investigation; and* ***(b) shall only address*** *those actions or omissions that are likely to result in* ***serious and irreparable damage*****".** According to him, the Interim Order failed to provide a reasonable and lawful basis for the determination that the issuance of the Interim Order was warranted due to the risk of serious and irreparable damage (harm) to the character and reputation of Mr. Davis and the PLP. Mr. Parker emphasizes that URCA failed to provide CBL with a reasoned basis for its decision to issue the Interim Order and instead, merely regurgitated the general premises of the complaints made by Mr. Davis and the PLP. He states that URCA asserted without justification "***temporal or material loss to the character and reputation of the Hon. Phillip E. 'Brave' Davis QC, MP. Leader of the Opposition and/or the Progressive Liberal Party"***, and in no way demonstrated how CBL's conduct posed a credible, or any discernible risk in that regard.

[29] Both Counsel hold a different view on whether URCA misinterpreted section 96 of the Comms Act and whether the Decision was in breach of that Act and the principles of natural justice. I am satisfied on the evidence before me that there is an arguable case that CBL was not afforded due process and the Decision itself may have been taken without proper regard for URCA's obligations to CBL or the principles of natural justice. On the face of it, it appears that URCA may not have provided CBL with adequate reasons for its Decision.

[30] Having satisfied myself that CBL has met the threshold requirement for leave to apply for judicial review, I now turn my attention to whether the grant of leave is subject to a discretionary bar such as whether there are other available alternative remedies.

Issue 2: Discretionary bar to leave: The alternative remedy

[31] Mr. Wilson QC submits, quite properly, that judicial review is a remedy of last resort and an applicant approaching the court for leave to apply for judicial review must exhaust the alternative remedy of appealing to the UAT which CBL has properly done when it filed its Notice of Appeal to the UAT.

[32] According to Mr. Wilson QC, in the instant case CBL's case for judicial review is indistinguishable from that which section 111(e) provides the UAT as the exclusive forum for statutory appeal. While in some cases the Court will find exceptional/special circumstances to exist because of the adequacy of the alternative remedy such that an applicant cannot secure the same remedies before the statutory tribunal that it can secure before the Supreme Court on judicial review. However, this is not the case for CBL.

[33] CBL seeks to rely on the allegation that, at the present moment, the UAT is not properly constituted to hear their appeal and therefore, the UAT does not have jurisdiction to hear their Appeal.

[34] According to Mr. Wilson QC, if CBL is seeking to invite the Court to grant leave for judicial review on the basis that the UAT cannot hear its appeal right now, CBL would be inviting the Court to circumvent the parliamentary will in establishing the UAT as the specialist tribunal for appeals from URCA's decisions merely because it's machinery is not conveniently ready at this very moment that CBL is seeking to appeal. This risks widespread trivializing of the role of the UAT and other appellate tribunals established by statute. If this was an issue the more appropriate course for CBL to have taken was to move the Minister responsible to issue the

instruments of appointment or to apply for a writ of mandamus compelling the appointments.

[35] Mr. Wilson QC contends that the Court will not permit departure from the statutory appeal process merely because it is less convenient or cumbersome than judicial review or even where there may be public interest reasons the Court will not permit an Applicant to circumvent the statutory procedure.

[36] Even in situations where it would be permissible to grant leave to commence judicial review notwithstanding the existence of an extra judicial statutory appeal process, Learned Queen's Counsel submits that the need to demonstrate exceptional circumstances justifying a departure from the statutory appeal process is even more acute where by clear words Parliament has excluded judicial review in favor of the statutory appeal as in this case. The Court will not easily circumvent Parliament's will in such cases. He referred to **Glencore Energy UK Limited v Commissioners of HMRC** (2017) EWCA Civ 1476 at [55] – [56] where the Court of Appeal held:

> ***"55.*** **In my view, the principle is based on the fact that judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective. However, since it is a matter of discretion for the court, where it is clear that a public authority is acting in defiance of the rule of law the High Court will be prepared to exercise its jurisdiction then and there without waiting for some other remedial process to take its course. Also, in considering <u>what should be taken to qualify as a suitable alternative remedy</u>, the court should have regard to the provision which Parliament has made to cater for the usual sort of case in terms of the procedures and remedies which have been established to deal with it. I<u>f Parliament has made it clear by its legislation that a particular sort of procedure or remedy is in its view appropriate to deal with a standard case, the court should be slow to conclude in its discretion that the public interest is so pressing that it ought to intervene to exercise its judicial review function along with or instead of that statutory procedure.</u> But of course it is possible that instances of unlawfulness will arise which are not of that standard description, in which case the availability of such a statutory procedure will be less significant as a factor.**
>
> **56. Treating judicial review in ordinary circumstances as a remedy of last resort fulfils a number of objectives. <u>It ensures the courts give</u>**

> **priority to statutory procedures as laid down by Parliament, respecting Parliament's judgment about what procedures are appropriate for particular contexts. It avoids expensive duplication of the effort which may be required if two sets of procedures are followed in relation to the same underlying subject matter. It minimises the potential for judicial review to be used to disrupt the smooth operation of statutory procedures which may be adequate to meet the justice of the case. It promotes proportionate allocation of judicial resources for dispute resolution and saves the High Court from undue pressure of work so that it remains available to provide speedy relief in other judicial review cases in fulfilment of its role as protector of the rule of law, where its intervention really is required."** [Emphasis added]

[37] According to Mr. Wilson QC, CBL has not shown that it has exhausted the statutory appeal remedy, it has not even made the most minimal effort to seek to get its hearing set down before the Tribunal. CBL's appeal is still alive and URCA was notified of it by the Registrar. Should the Registrar set down a hearing before an empaneled tribunal, the function of that statutory tribunal would have been duplicated and usurped by the Supreme Court if leave is granted herein.

[38] Accordingly, says Mr. Wilson, CBL has not exhausted the alternative remedies available to it under the statutory appeal machinery.

[39] Mr. Wilson QC further submits that the principle will be applied where there are other available alternative remedies which have not been utilized by an applicant so that the Court will not permit judicial review unless there are most exceptional circumstances justifying a departure from those alternative remedies.

[40] What constitutes "exceptional/special circumstances was explained by Donaldson MR in **R v Secretary of State for Home Department ex parte Swatti** 1986 1 WLR 477 at 485D:

> **"By definition, exceptional circumstances defy definition, but where Parliament provides an appeal procedure, judicial review will have no place, unless the applicant can distinguish his case from the type of case for which the appeal procedure was provided."**

[41] A case which has some similarity to the present case is **Bertram Bain v Commissioner of Police** [2017/PUB/jrv/00023. This Court granted leave to Mr. Bain to apply for judicial review and explained to Counsel for the Respondent that, at the substantive hearing, the leave application may be challenged again. After being discharged from the Royal Bahamas Police Force, Mr. Bain properly filed a Notice of Appeal to the Governor-General as he was required to do. Less than two weeks later, he applied for leave for judicial review and the Court granted it. At the substantive hearing, the Respondent raised a preliminary issue that, having taken the correct course of action and appealed to the Governor General, leave should have been refused at the leave stage.

[42] Mr. Bain argued that his case fell in the category of exceptional circumstances and that, (i) even after eight months, the Governor-General has not appointed a Board to hear the appeal and (ii) the Respondent abused his power when he discharged Mr. Bain. The Court held that the application for judicial review was premature and the Applicant had explored the correct avenue by appealing the decision of the Respondent to the Governor General. The Court, in **Bain**, made an unless order that the Governor General sets up a Board immediately to hear the appeal which was dutifully obeyed.

[43] Each case will depend on their own peculiar facts and circumstances and that an intended applicant should first exhaust any right of appeal or other means provided for challenging the decision before making an application for judicial review. At paragraph 21 to 22 of Bain, I quoted extensively from Winder J in **Lacroix v Stipendiary & Circuit Magistrate Derrance Rolle-Davis and another** [2013] 3 BHS J. No. 68 where Winder J said at paragraphs 26 to 28 of the Judgment:

> **"26 The existence of an appeal process is not the end of the matter. In Sargent v. Knowles et al CL1334 of 1993, Sawyer J. (as she then was), relying on the English Court of Appeal decision of R. v. Chief Constable of the Merseyside Police ex parte Calveley and others [1986] 1 All E.R. 251 held that in exceptional circumstances the Court could, in its discretion, entertain judicial review proceedings even where the Applicants had neither exhausted nor pursued their alternative statutory right of appeal.** [Emphasis added]

27 Sawyer J. went on to identify circumstances where to the Courts have asserted the existence of this discretion:

(1) In R v. Paddington Valuation Officer, ex p Peachey Property Corp Ltd [1965] 2 All E.R. 836 at 840, [1966] 1 QB 380 at 400, Lord Denning MR, with the agreement of Danckwerts and Salmon LJJ, held that certiorari and mandamus were available where the alternative statutory remedy was 'nowhere near so convenient, beneficial and effectual'.

(2) In R v. Hillingdon London Borough, ex p Royco Homes Ltd [1974] 2 All E.R. 643 at 648, [1974] 1 QB 720 at 728 Widgery CJ said: '...It has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy'.

(3) In R v. Hallstrom, ex p W [1958] 3 All E.R. 775 at 789 790, C19851 3 WLR 1090 at 1108 per Glidewell LJ, :'Whether the alternative statutory procedure would be quicker, or slower, than procedure by way of judicial review, whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body, these are amongst the matters which a Court should take into account when deciding whether to grant relief by way of judicial review when an alternative remedy is available.'[Emphasis added]

(4) In Preston v. IRC [1985] 2 All E.R. 237 at 337 338, [1985] AC 835 at 862, per Lord Templeman: 'Judicial review process should not be allowed to supplant the normal statutory appeal procedure [but] present circumstances are exceptional in that the appeal procedure provided by s 462 cannot begin to operate if the conduct of the commissioners in initiating proceedings under s 460 was unlawful.'

28 In Sargent, Sawyer J., in finding an exceptional circumstance took into account the fact that judicial review was far less cumbersome than an appeal under the Magistrates Act. She also relied on the fact that it was slower and more costly to obtain a result having regard to the entering into of a surety and recognizance."

[44] In essence, even where there is an alternative remedy, the Court may still grant leave for an applicant to apply for judicial review if an exceptional circumstance is shown.

[45] In the present case, given its importance and the fact that elections are just less than 3 weeks away, if the appeal to the UAT is not heard promptly and urgently, it may defeat the whole purpose. Political advertisements after a general election are moot. Therefore, it was incumbent upon URCA to urge the UAT to act quickly to hear CBL's appeal. It has been a month and CBL has had no indication when its appeal will be heard, if at all. The members of the UAT are nominated but they have not received their Instruments of Appointment. The Court cannot speculate when this will happen.

[46] This case falls without the category of "exceptional circumstance", and as Glidewell LJ in **R. v Hallstrom, ex p W** [1958] 3 All ER 775 at 789, 790 said;

> **'Whether the alternative statutory procedure would be quicker, or slower, than procedure by way of judicial review, whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body, these are amongst the matters which a Court should take into account when deciding whether to grant relief by way of judicial review when an alternative remedy is available.'** [Emphasis added]

[47] In my opinion, this is a proper case where the Court ought to exercise its discretion and grant leave to CBL to apply for judicial review.

[48] To emphasize, CBL has first attempted to exhaust its alternative remedy by way of appeal to the UAT but that body is not properly constituted and therefore incompetent to hear and determine this matter. The Attorney General was unable to advise CBL as to a timeline when the UAT would be able to be properly constituted.

[49] In the circumstances, I agree with Mr. Parker that, at present, there is no viable remedy to deal with CBL's appeal urgently and consequently CBL had to make the present application to the Court.

[50] Before I end this discourse, I find the following passage from the St. Vincentian case of **Prame Dasrath** (Suit No, 143 of 1987) to be useful. Singh J (as he then was) stated:

> **"A court ought not to refuse Certiorari because of alternative remedies other than appeal unless it is clearly satisfied that those other remedies are more appropriate and, where the alternative remedy is the statutory right to appeal, if the applicant claims to be aggrieved by a decision made without jurisdiction or in excess of jurisdiction or in breach of the rules of natural justice the fact that he has not taken advantage of such statutory right is irrelevant".**

Dated this 25th day of August, 2021

Indra H. Charles
Justice